IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

CRL.A.No. 734 of 1998(C)

(AGAINST THE JUDGMENT OF ACQUITTAL IN CRA.317/1996 of SESSIONS COURT, THRISSUR DATED 12/06/98 SETTING ASIDE THE JUDGMENT CONVICTION AND SENTENCE IN S.T.NO.2022/96 OF THEJUDICIAL MAGISTRATE OF FIRST CLASS, WADAKKANCHERRY DATED 18/10/1996.

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APPELLANT:RESPONDENT:COMPLAINANT:

RAGHAVAN,
S/O.GOVINDAN, THEKKEKKARA VILLAGE,
PAZHAYANNUR PANCHAYAT, TALAPPILY TALUK.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: APPELLANTS/ACCUSED & STATE:

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1. **RAVI, S/O.KUNJAN,**
   BRAMAMANGALAM DESOM, CHEMPU VILLAGE,
   VAIKOM TALUK, KOTTAYAM DISTRICT.

2. **STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. K.C. SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

Crl.Appeal No. 734 of 1998

Dated this the 17th day of January, 2007

Judgment

Appellant is the brother-in-law of the first respondent. He filed a private complaint against first respondent alleging offence punishable under section 420 of the Indian Penal Code and section 138 of the Negotiable Instruments Act. The trial court found the respondent guilty under section 138 of the Negotiable Instruments Act and accepted the appellant's case that cheque issued for Rs.90,000/- on 5.8.1983 to him for consideration was dishonoured for insufficiency of funds, but, the appellate court reversed the same. This appeal is filed against the order of acquittal.

2. It is admitted in evidence that there was some dispute between the appellant and the respondent regarding the division of property in the appellant's house. According to the respondent, the complaint was filed due to that enmity filling up the blank cheques. Respondent gave evidence as DW1 and denied that he has borrowed Rs.90,000/- or issued the cheque. According to him, he had borrowed Rs.25,000/- from the appellant

during 1990-91 and at that time two blank cheques were given and Ext.D1 series were produced to show that the above amount was repaid. Ext.D2 is a letter sent by the appellant and Ext.D3 series are letters issued by the wife of the appellant. Ext.D4 is the reply notice and Ext.D5 is the compromise petition and Ext.D6 is copy of the judgment in O.S.No.63 of 1994 on the file of Munsiff's Court, Vaikom. According to the appellant, Rs.90,000/- borrowed by respondent was not repaid and Ext.P1 cheque was issued on 5.8.1993 for Rs.90,000/= on demanding the amount. Respondent came to his house and issued the cheque, but, appellant did not say when actually Rs.90,000/= was given. The appellant also, while examining as PW1, admitted that he wrote the amount in Ext.P1 cheque. No evidence was adduced to show that Ext.P1 cheque was issued for a legally enforceable debt. Ext.D1 series would show that respondent repaid the amounts borrowed earlier to the appellant by demand draft. It is further proved that the respondent had many transactions with the appellant during 1990-91. Ext.D2 is an inland letter addressed to the by the appellant. Ext.D3 series are letters said to have been written by the wife of the appellant. No challenge is made to these

letters. Ext.D2 and D3 series also refer to transactions. In the letter dated 6.4.1993, Ext.D2, respondent was directed to give a blank dated cheque. In letter dated 29.11.1990 (Ext.D3 series) also respondent was directed to bring two blank cheques. At that time, their relationship was cordial. The appellant and respondent were in-laws. The court below found that admission of PW1 that he wrote the amount in Ext.P1 probabilises the version of the respondent. Respondent had handed over the signed blank cheque. Exts. D5 and D6 also show that there were many other transactions between them. Considering the entire matter, the appellate court found that the version of the respondent was more probable and hence he was acquitted. I am of the view that no grounds are made out in interfering in the order of acquittal. Apart from that I also note that no effective steps were made to serve notice on the first respondent even though notice was ordered on 17.9.1998. Address of the first respondent is given as follows:

"Ravi S/o. Kunjan,
Bramamangalam desom,
Chempu Village, Vaikom Taluk,
Kottayam district."

Even the initials or house name are not given or furnished so far. In these circumstances also, defects are not cured so far. Appeal lacks merit and the appeal is dismissed.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL No.734/98

Judgment

Dated:17th January, 2007